

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

IN THE MATTER OF

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Miscellaneous Case No. 05-MC-409

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R.M.W.

OPINION

I.

Respondent R.M.W., a former member of the Bar of this Court, who was convicted of several felonies and as a result lost his bar membership, has petitioned for readmission to membership. Pursuant to Local Rule 705.4.d, the Court, upon recommendation of its Disciplinary and Admissions Committee, appointed G. Stewart Webb, Jr., Esquire, a member of the Bar of the Court, to conduct an investigation of Respondent. At approximately the same time, the Court *en banc* issued its decision in this docket and in In the Matter of S.G.P., Case No. 06-MC-116, overruling In the Matter of G.L.S., 586 F. Supp. 375 (D. Md. 1984), establishing new criteria for the evaluation of applications and reapplications for membership in our Bar by individuals convicted of felonies. *See* 428 F. Supp. 2d 389 (D. Md. 2006).

Mr. Webb prepared a Report and Recommendation in connection with the Petition, which was followed by a hearing held before a Three-Judge Panel consisting of Judge Peter J. Messitte (Chair), Chief Judge Benson E. Legg, and Judge Andre M. Davis.

Having considered Respondent's Petition, the Panel, on behalf of the Full Bench of the Court, GRANTS the Petition for Reinstatement.

II.

Local Rule 705.4(c) of the Court provides that a petitioner for membership in the Court's bar who has been disbarred or suspended, "shall have the burden of demonstrating by clear and convincing evidence that he has the moral qualifications, competency and learning in the law required for admission to practice law before this Court and that his resumption of the practice of law will not be detrimental to the integrity and standing of the Bar or to the administration of justice, or subversive of the public interest." In evaluating these petitions, as set out in its decision of April 21, 2006 in this docket, the Court considers:

1. The nature and character of the offense or offenses committed;
2. The number and duration of offenses and the sentence as to each;
3. The period of any probation or supervised release term and whether the petitioner's adjustment to same was satisfactory;
4. The age and maturity of the applicant when the offenses were committed;
5. The grant or denial of a pardon for any offenses committed;
6. Whether the petitioner was disbarred by any other court;

7. The number of years that have elapsed since the last offense was committed, and the presence or absence of misconduct during that period;
8. Whether the petitioner has complied in all respects with the terms and conditions of prior disciplinary or remedial orders, including the payment of any costs ordered by the disbarring court;
9. Whether the petitioner has engaged or attempted or offered to engage in the unauthorized practice of law;
10. With regard to any incapacity or infirmity (including alcohol or drug abuse), whether it has ceased to exist and is not reasonably likely to recur in the future;
11. Whether the petitioner recognizes the wrongfulness and seriousness of the professional misconduct for which discipline was imposed;
12. Whether the petitioner currently has the requisite honesty and integrity to practice law;
13. The opinions of character witnesses about the applicant's moral fitness;
14. Whether the petitioner has kept informed about recent developments in the law and is competent to practice law;
15. Any other re-admissions to the bar since the petitioner's disbarment;
16. Any other matter that the petitioner may deem relevant to the application or that may be specifically requested by the Court.

III.

Respondent, age 57, holds a Bachelor of Science degree in chemistry from Duke University and a law degree from George Washington University Law School. He was admitted to the Maryland Bar in June 1975 and immediately began to practice law in his home town, Frederick, Maryland.

Having used marijuana and other drugs as early as his high school days, by the late 1970's Respondent had become addicted to cocaine and alcohol. In his law practice, much of which involved representation of clients charged with drinking and driving offenses and family matters, he was often paid in cash which he intentionally failed to report as income. This unreported income was used to purchase cocaine for his own consumption such that, during the period of time before his arrest, he was spending between \$30,000 and \$40,000 a year on his drug habit.

In September 1982, a search warrant was executed on Respondent's residence, which ultimately led to felony convictions and his disbarment from membership in our Court.

Additional background history will be recited in connection with the Court's discussion of each of the factors bearing upon the request for reinstatement.

IV.

- A. The nature and character of the offense or offenses committed;
- B. The number and duration of offenses and the sentence as to each; and
- C. The period of any probation or supervised release term and whether the petitioner's adjustment to same was satisfactory.

Following his indictment in February 1983 by a State Grand Jury sitting in Anne Arundel County, Respondent pled not guilty and, after a 7 day jury trial, was convicted of one count of conspiracy to violate the Maryland Income Tax Laws and three counts of unlawfully and willfully filing false and fraudulent state tax returns for the years 1979 and 1980. On September 14, 1983, Judge Raymond Thieme of the Anne Arundel County Circuit Court sentenced Respondent to 5 years of imprisonment, with all but one year suspended on the conspiracy count, and one year on each of the false tax return counts, all to run concurrently with the sentence on the conspiracy count. In addition, Judge Thieme imposed a fine in the amount of 50% of all taxes due, as set forth in the Indictment. On appeal, the conviction and sentence were affirmed by the Maryland Court of Appeals. [*R.M.W.*] v. *State*, 301 Md. 214, 482 A.2d 866 (1984).

Federal charges were placed soon after the state indictment. Then, on October 31, 1983, following a three-day bench trial before Judge Norman Ramsey of this Court, Respondent was found guilty of one count of distribution of cocaine, two counts of possession with intent to distribution of cocaine, and one count of possession of cocaine. He was sentenced to two years of imprisonment on the distribution count and one year each on the possession with intent to distribute and possession counts, with the terms to run concurrently with the term imposed on the distribution count. Respondent was given a special parole term of three years. Although the Panel has not been provided with any written opinion, Respondent reports that the conviction and sentence were upheld by the U.S. Court of Appeals for the Fourth Circuit.

Respondent served his federal sentence first, commencing on December 10, 1984 at Allenwood Prison Camp in Pennsylvania. Thereafter, by Order dated July 12, 1985, pursuant to a Motion for Reduction of Sentence, Judge Ramsey reduced Respondent's federal prison term to one year and one day. Respondent remained at Allenwood until August 25, 1985, when he was released to the State of Maryland to serve his state sentence. However, as a result of a motion Respondent filed with Judge Thieme of the Anne Arundel Circuit Court, his state sentence was modified to run concurrently with the federal sentence, as a result of which Respondent was allowed to serve the remainder of his state sentence in the Frederick County Detention Center on a live in/work out basis. Respondent served an additional thirty-one days of confinement in the Frederick County facility to complete his state time and was released from State custody on September 25, 1985.

By all accounts, Respondent complied in full with the conditions of both the special parole condition of his federal sentence and his state probation and was discharged from those terms after completing same. Indeed, in written statements submitted in connection with Respondent's proceedings for reinstatement to the Maryland Bar, his state probation agent described him as "cooperative in every way" and his U.S. Probation Officer characterized him as "a remarkable probationer" ... "much more motivated than the usual person that she sees." The U.S. Probation Officer testified, among other things, that during his federal probation, Respondent was traveling 50 miles just to attend a Narcotics Anonymous meeting a couple of times a week.

D. The age and maturity of the applicant when the offenses were committed.

The criminal acts of which Respondent was convicted occurred between 1979 and 1982, when Respondent was between 30 and 33 years of age.

At that time, he was a relatively new attorney in the process of building a criminal law practice based largely on volume. Respondent testified that he was working between 80 and 100 hours per week; indeed his ability to do so, he says, was due to in part because of his cocaine use.

The distribution count of which Respondent was convicted apparently involved giving his girlfriend a Christmas present of a rock of cocaine; there was no other evidence suggesting that Respondent was otherwise trafficking in the substance.

Respondent's drug use, while serious, had not yet risen to the level of seriousness that it attained under the Federal Sentencing Guidelines.¹ On the other hand, the income tax evasion and failure to file income tax returns then and now involved dishonesty and deception that had to be sharply apparent, especially to someone schooled in the law, whatever his age. Indeed, as will be discussed presently, it was precisely that consideration that led the Review Board of the Maryland Attorney Grievance Commission to deny Respondent's Petition for Reinstatement to the Maryland State Bar in 1999 (although he was eventually granted reinstatement by the Court of Appeals in connection with that Petition).

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The Federal Sentencing Guidelines did not come into effect until November 1, 1987, well after Respondent's sentences in the present case.

E. The grant or denial of a pardon for any offenses committed.

Respondent has never applied for a pardon. In fact he told both the Court Investigator and this Panel that he does not intend to do so because he admits that he is guilty of the offenses of which he was convicted and is not entitled to a pardon. He is emphatic that, as part of his recovery, he needs to accept responsibility for what he has done and that a pardon application would be inconsistent with that acceptance.

F. Whether petitioner was disbarred by any other court.

Respondent was suspended from the practice of law by the Maryland Court of Appeals in April 1985 and disbarred on June 4, 1987. The disbarment decision is recorded in *Attorney Grievance Commission v. [R.M.W.]*, 309 Md. 658, 526 A.2d 55 (1987). The Court of Appeals declined to find that Respondent's addiction to alcohol or drugs in any way mitigated the sanction it was imposing, and agreed with the conclusion of the trial judge that it was difficult to reconcile Respondent's ability to "competently function as an attorney, while addicted to cocaine, and at the same time find that his addiction and personality disorder caused his criminal activity." 301 Md. at 665; 526 A.2d at 58.

The records of the United States District Court for the District of Maryland show that Respondent was disbarred by this Court on July 10, 1984. There is no indication that any opinion was filed in connection with that disbarment.

G. The number of years that have elapsed since the last offense was committed, and the presence or absence of misconduct during that period.

It has now been some 24 years since Respondent last used cocaine and 14 years since he has consumed alcohol. It has been over 19 years since he was disbarred by the State of Maryland and over 7 years since his reinstatement to the Maryland Bar.

In connection with Respondent's application for re-admission to the Maryland Bar, as of early 2000, the investigator for the Maryland Attorney Grievance Commission found no evidence of any misconduct on Respondent's part nor did any of the Review Panels of the Maryland Attorney Grievance Commission find any such conduct.

The Court's investigator in the present proceeding, Mr. Webb, discussed the matter of Respondent's conduct with the Director and Deputy Director of the Maryland Lawyers Assistance Program, which has significant experience in dealing with attorneys who are currently or who in the past have been substance abusers. Richard Vincent, Director of the program, explained to the Panel that the recovery process for a substance abuser never ends and that the individual needs to remain continuously involved with Alcoholics Anonymous and its group meetings, which provide support to the individual. Mr. Vincent stated that while he had greater contact with Respondent in the early years of Respondent's steps toward recovery, he has still had continuing contact with Respondent and over the years has used him as a volunteer assisting other lawyers with substance abuse problems. Mr. Vincent states his absolute conviction that Respondent understands and fully accepts the recovery process.

Carol Waldhauser, Deputy Director of the Lawyers Assistance Program, who is responsible for monitoring participants, has had more frequent contact with Respondent

in recent years, and states that in her opinion Respondent takes the AA's twelve-step recovery program "seriously." Ms. Waldhauser's feedback from lawyers who have been mentored by Respondent is that he has been "excellent." She indicated that she cannot "over-emphasize" the value of Respondent's contribution to the Lawyers Assistance Program.

H. Whether the petitioner has complied in all respects with the terms and conditions of prior disciplinary or remedial orders, including the payment of any costs ordered by the disbarring court.

Respondent served his prison time and satisfied in full the conditions of parole and probation terms, including the payment of all taxes and court costs due.

I. Whether the petitioner has engaged or attempted or offered to engage in the unauthorized practice of law.

The Court notes that since February 3, 2000, when he was formally readmitted to the Maryland Bar, Respondent has been authorized to practice law in this State and has in fact done so.

Prior to his re-admission to the Maryland Bar and following his release from confinement, Respondent worked with various of his family's businesses in the Frederick area, which primarily owned rental properties. These businesses included Peoples Home Furnitures, Inc., Security Acceptance Corporation, and R&R Realty, all located in Brunswick, Frederick County. Respondent indicates that in that connection he drew some leases and appeared on behalf of the businesses in state district court, apparently in

connection with collection cases. Although under the Local Rules of this Court, a corporation may only appear in this Court through counsel, *see* Local Rule 101.1, and although the same requirement now generally obtains in state court proceedings, *see* Maryland Rule 2-131(a) (Circuit Court) and 3-131(a) (District Court), a corporation in Maryland is permitted to appear through an officer in state district court in cases involving up to the maximum jurisdictional amount (\$5,000), without the need of being represented by an attorney admitted to practice. *See* Maryland Business Occupations and Professions Article, § 10-206(b)(4); and Maryland Courts and Judicial Proceedings Article, § 4-405. Respondent could not recall ever violating this dollar limit and, accordingly, the Court concludes that his appearances in the state courts during the period of his disbarment did not violate Maryland law.

In addition to the foregoing, prior to his re-admission to the Maryland Bar, Respondent served as a paralegal for individual attorneys as well as for the Public Defender in the Frederick County area.

J. With regard to any incapacity or infirmity (including alcohol or drug abuse), whether it has ceased to exist and is not reasonably likely to recur in the future.

Every indication is that Respondent's use of cocaine and alcohol belong to his distant past.

Immediately following his release from prison, he participated in both Narcotics and Alcoholics Anonymous and was in an outpatient substance abuse program at

the Frederick Counseling Center in Frederick. This program lasted 10 months and Respondent was considered to have completed it successfully.

Since then, Respondent has been a regular participant in Alcoholics Anonymous. His sponsor indicates that Respondent has “made a conscientious, good faith, honest effort to reform.” Although Respondent concedes that his attendance may be less frequent today than in the past and although he does not currently have a designated sponsor, the Court’s Investigator Mr. Webb stated his belief, based on his interviews, that Respondent remains sincerely committed to his recovery and the AA’s twelve-step program.

Respondent was evaluated by three psychiatrists in connection with the Maryland disbarment and reinstatement proceedings. In the disbarment proceedings, Respondent urged that he was so mentally impaired or addicted to cocaine that his impairment or addiction was “to a substantial degree” responsible for the conduct underlying his criminal convictions. *See Attorney Grievance Commission v. [R.M.W.]*, *supra*, 309 Md. at 663, 526 A.2d 57. There was, of course, psychiatric testimony to the contrary, *i.e.* to the effect that while Respondent might have had a history of cocaine abuse and a narcissistic personality disorder, he nonetheless had no substantial degree of mental impairment and drug addiction and/or personality disorder were not responsible for his criminal activity. This was the finding that the trial judge and ultimately the Maryland Court of Appeals reached as a predicate to his disbarment from the State Bar.

In connection with his subsequent state bar reinstatement proceedings, Dr. Jonas R. Rappaport indicated that, in his view, “within reasonable medical certainty, ...

[Respondent] has been rehabilitated from his addictive illness and should be emotionally able to once again conduct himself as a stable and responsible member of the Bar.”

As for whether Respondent’s use for cocaine or alcohol is “not reasonably likely to recur in the future,” the best indication of that would seem to be that, from the time of his reinstatement in the Maryland State Bar some 7 years ago until today, Respondent has remained continuously abstinent. He indicated to Mr. Webb, and repeated to this Panel, that he no longer felt the compulsion to drink or do drugs and that he understood his need to constantly rely on the support systems of Narcotics and Alcoholics Anonymous and other programs for ex-drug addicts or alcoholics.

K. Whether the petitioner recognizes the wrongfulness and seriousness of the professional misconduct for which discipline was imposed.

Respondent has stated many times over that he recognized the wrongfulness and seriousness of his prior misconduct and that he is appropriately remorseful about it.

Beyond his own declarations, it is clear that Respondent has worked actively and extensively with Maryland’s Lawyers Assistance Program and other impaired lawyers, helping them come to terms with their problems. Indeed Respondent has been described as “a role model” in this respect.

Respondent’s refusal to pursue the possibility of a pardon, because of his professed need to accept responsibility for his actions, is another indication that he recognizes the wrongfulness and seriousness of his misconduct.

- L. Whether the petitioner currently has the requisite honesty and integrity to practice law; and
- M. The opinions of character witnesses about the applicant's moral fitness.

The opinions of the Director and Deputy Director of the Maryland Lawyers Assistance Program have already been discussed. Mr. Webb also interviewed two Judges of the Circuit Court for Frederick County and two Judges of the District Court for Frederick County, as well as William L. Haugh, Jr., Esquire, with whom Respondent is now practicing law in Frederick. Mr. Webb reports that uniformly the Judges he interviewed had extremely high regard for Respondent, his professionalism, his stability, his knowledge of the law and his preparation. None of the Judges could recall a single instance of Respondent missing a deadline and all remarked on the thoroughness of his preparation and his skill as an advocate.

The Judges noted that Respondent has served as a mediator, particularly in family law matters and that he has represented children in domestic or family cases. One Judge characterized Respondent's service in these roles as "wonderful." Another described him as "one of the finest lawyers" to appear before him and a third called him "one of the best trial lawyers in Frederick." According to Mr. Webb, several Judges indicated that they thought Respondent was a better lawyer today than when he was disbarred. One Judge described Respondent as "a poster child" for rehabilitation. All the Judges enthusiastically support Respondent's current petition for reinstatement.

Mr. Haugh, with whom Respondent began working as a legal assistant and paralegal in 1997 and with whom he formed a partnership in 2005, attested to Respondent's competency both as a litigator and a mediator, as well as his work with other impaired lawyers and his continued participation in Alcoholics Anonymous.

Mr. Haugh, a former President of the Frederick County Bar, is in a mentor relationship with Respondent, and continuously consults with him about matters pertaining to their practice.

N. Whether the petitioner has kept informed about recent developments in the law and is competent to practice law.

Respondent has been practicing law, primarily in the courts of Frederick County, for more than 7 years since his reinstatement to the Maryland Bar. The comments of the Judges of that Court relative to his competency have already been related.

Over that period, Respondent has attended numerous continuing education seminars, performed volunteer work in the Office of Public Defender, and served as a mediator, primarily in family law and personal injury cases. Petitioner has received numerous certificates of qualification in mediation matters from the Frederick County Bar.²

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Although Respondent has been the subject of a certain number of complaints from clients since his re-admission to the Maryland Bar, Mr. Webb reviewed the complaints and found them lacking in merit. The Court has reviewed his analysis and agrees.

O. Any other re-admissions to the bar since the petitioner's disbarment.

Respondent was reinstated to the Maryland Bar by Order dated January 7, 2000 signed by Chief Judge Bell for the Maryland Court of Appeals, "with a majority of the Court concurring." He was returned to the Registry of Attorneys on February 3, 2000. Since that time he has satisfied the conditions set forth in that Order in every respect.

Nonetheless, the Panel is aware that, in connection with his Petition for Reinstatement to the State Bar, although the Inquiry Panel recommended Respondent's reinstatement, the Board of Review disagreed and recommended that his Petition be denied. The Board "agreed with the Inquiry Panel that [Respondent's] efforts at rehabilitation for substance abuse were admirable and that his community and civic services were impressive and that his legal continuing education and earnest desire to practice law were compelling," but noted that "his income tax evasion and failure to file were troublesome." The Board went on to say that "some members felt that that aspect alone deemed him unworthy to be reinstated as a member of the Bar." Accordingly, the Board voted to deny the Petition.

Notably, Bar Counsel disagreed with the Board of Review and asked the Court of Appeals to grant the Petition for Reinstatement, which it did, albeit only "with a majority of the Court concurring."

Since that time, Respondent has practiced law without incident, allowing for a few individual grievances that have been filed against him, none of which in the Court's view appear to have been meritorious.

P. Any other matter that the petitioner may deem relevant to the application or that may be specifically requested by the Court.

In view of the specific reservations that members of the Review Board expressed in connection with the Petitioner's application for reinstatement to the Maryland Bar, the Court asked Mr. Webb to review authorities from other jurisdictions to determine the extent to which reinstatement to bar membership after a felony conviction -- particularly one involving dishonesty such as tax fraud -- has been granted or denied.

Together with Christopher R. Mellott, Esquire, his partner in the law firm of Venable LLP and the Court-appointed investigator in the companion case decided today, *In the Matter of S.G.P.*, Case No. 06-MC-116, Mr. Webb has done so. In a thorough and lucid memorandum, they conclude that:

A small minority of States enforce rules making some convicted felons ineligible for admission to the bar. A small minority of States enforce "permanent disbarment" provisions, largely in cases involving an attorney's intentional misappropriation or theft of client funds. However, most jurisdictions do *not* categorize any criminal offenses or misconduct as being so heinous that they will preclude the possibility of admission or reinstatement.³

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Ordinarily the Court would cite to limited portions of a memorandum such as this to illustrate the precise point or points set forth in the text of its opinion. However, the unanimous feeling of the Panel is that the Webb-Mellott memorandum is extraordinarily thorough in its exposition of a very important issue not well illuminated by the case law which would almost certainly prove useful to other courts facing the issue. Accordingly, Mr. Webb and Mr. Mellott's Memorandum is set forth in full as Attachment A to this Opinion.

This Court believes that dishonesty involved in evading income taxes and in not filing tax returns has always been a serious matter. Drug activity today has become a matter of prime concern in the criminal justice system. Indeed, were Respondent's cases to have come before a federal court in 2007, it is clear that the punishment to be imposed would be considerably more severe than that which was imposed by the state and federal judges in the mid-1980's.

But whatever the courts of some jurisdictions may believe about the permanent disqualification to serve as an attorney of an individual who has been convicted of a crime of dishonesty, this Court, joining the majority of courts, takes a different view. The Court believes that, when sufficient time has passed since the criminal activity, when there is manifest indication of the individual's rehabilitation and remorse as well as his skill to serve as an attorney, when all that is presented to the Court in a clear and convincing matter, there is still room for someone to rejoin (or indeed to join in the first instance) the ranks of the Bar of this Court.

Accordingly, the Court concludes that Respondent's rehabilitation is genuine and that he does indeed represent a benchmark for attorneys similarly situated who would seek reinstatement in our Bar.

For these reasons, on behalf of the Full Bench of the Court, the Panel GRANTS Respondent's Petition for Reinstatement. A separate Order will be ENTERED.

May 1, 2007 /s/
HONORABLE PETER J. MESSITTE

May 1, 2007

/s/
HONORABLE BENSON E. LEGG

May 1, 2007

/s/
HONORABLE ANDRE M. DAVIS